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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ANDERSON, CATHARINE L

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/965,740	<b>Applicant(s)</b> BATICH ET AL.	
	<b>Examiner</b> Lynne Anderson	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30,31,33-36,38-40,42,44-46,51,67-69,72 and 86-93 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-12,14,53-58,70 and 79-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/7/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,4-8,10-12,14,30,31,33-36,38-40,42,44,45,51,53-58,67-70,72 and 79-93.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 April 2008 has been entered.

### ***Response to Amendment***

2. The Declaration under 37 CFR 1.132 filed 29 April 2008 is sufficient to overcome the rejection of claims 30-31, 33-36, 38-40, 42, 44-46, 51, 67-69, 72, and 86-93 based upon 35 U.S.C. 103(a) over Swanson (5,783,502) in view of Sherba et al. (EP 0 493 970).

### ***Response to Arguments***

3. Applicant's arguments filed 29 April 2008 have been fully considered but they are not persuasive.

4. With respect to claim 1, the present claim is now amended to main chain of the polymer be bonded to the flexible substrate. Since the main chain of the polymer of Swanson is bonded to the flexible substrate by means of the photoreactive group (see Column 2, lines 34-48), Swanson anticipates the present claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 5-14, 53, 57-58, 70, 79-83, and 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Swanson (5,783,502).

7. With respect to claims 1 and 79, Swanson discloses a material capable of absorbing biological fluids comprising a flexible substrate and an enhanced surface, as disclosed in column 1, lines 9-15. The enhanced surface comprises a polymer of monomeric moieties comprising a quaternary ammonium, as disclosed in column 5, lines 34-53. The polymer is covalently bonded to the flexible substrate, as disclosed in column 2, lines 45-48, and is therefore non-hydrolyzable and non-leachable.

8. With respect to claim 2, the monomeric moieties comprise a quaternary ammonium, as disclosed in column 5, lines 34-53.

9. With respect to claim 5, the polymer is completely polymerized, and therefore has a degree of polymerization of 100.

10. With respect to claims 6 and 85, the material comprises part of a wound dressing, sponge, or surgical gown, as disclosed in column 1, lines 9-10.

11. With respect to claims 7 and 80, the flexible substrate is naturally derived, as disclosed in column 4, lines 16-17.

12. With respect to claims 8 and 81, the flexible substrate is synthetic, as disclosed in column 4, lines 16-17.

13. With respect to claim 9, the polymer is bonded to the flexible substrate by an ether linkage, as disclosed in the table on column 9, and column 9, lines 7-8.

14. With respect to claim 10, the claim is drawn to the final product of the absorbent material. The method of forming the covalent bond between the substrate and polymer is considered a product-by-process limitation. Therefore, the claim is anticipated by the absorbent material of Swanson that exhibits all the structural limitations of the final product.

15. With respect to claims 11 and 83, the polymer is formed from vinyl-containing monomers, as disclosed in column 5, lines 53-55.

16. With respect to claim 12, the monomers are ammonium salts, as disclosed in column 5, lines 57-62.

17. With respect to claim 13, the monomers are methacrylamides, as disclosed in column 5, lines 57-62.

18. With respect to claim 14, the monomers are vinyl pyridine derivatives, as disclosed in column 5, lines 53-55.

19. With respect to claims 53 and 58, the flexible substrate may be woven or nonwoven, as disclosed in column 4, lines 10-25.

***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (5,783,502) in view of Mao (6,346,125).

22. Swanson discloses all aspects of the claimed invention with the exception of the moieties comprising a biguanide. Mao discloses a material for absorbing fluids comprising a flexible substrate having an enhanced area comprising a polymer of antimicrobial monomeric moieties, as disclosed in column 1, lines 5-8. The flexible substrate comprises a nonwoven fabric of cellulose or synthetic fibers, as disclosed in column 9, lines 1-9. The antimicrobial may be a biguanide, as disclosed in column 4, lines 42-46. The treatment of the substrate with a quaternary compound or biguanide provides the fabric with improved inhibition of microorganisms and odors, as disclosed in column 9, lines 20-24. It would therefore be obvious to one of ordinary skill in the art at the time of invention to treat the flexible substrate of Swanson with a biguanide, as taught by Mao, to provide the fabric with improved inhibition of microorganisms and odors.

23. Claims 15, 54, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (5,783,502) in view of Kolb et al. (6,797,856).

24. Swanson fails to disclose dimethyldiallylammonium chloride (DADMAC). Kolb teaches the use of quaternary ammonium and DADMAC as equivalent compounds in the treatment of an absorbent material for antimicrobial purposes, as disclosed in

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column 6, lines 16-33. It would therefore be obvious to one of ordinary skill in the art at the time of invention to treat the flexible substrate of Swanson with dimethyldiallylammonium chloride, as taught by Kolb, since it is functionally equivalent to quaternary ammonium.

25. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (5,783,502) in view of Faries, Jr., et al (5,816,252).

26. Swanson discloses all aspects of the claimed invention with the exception of an indicator. Faries teaches the use of an indicator in a surgical drape to alert to the presence of leaks, as disclosed in column 2, line 65 to column 3, line 3. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Swanson with an indicator, as taught by Faries, to alert to the presence of leaks.

27. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (5,783,502).

28. Swanson discloses all aspects of the claimed invention with the exception of a hemostatic agent. The use of hemostatic agents in wound dressings to inhibit bleeding are well known in the art. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Swanson with a hemostatic agent to inhibit bleeding.

***Allowable Subject Matter***

29. Claims 30-31, 33-36, 38-40, 42, 44-46, 51, 67-69, 72, and 86-93 are allowed.

30. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to disclose the quaternary ammonium or biguinide groups being bonded to the polymer such that they are not pendant to the main chain of the polymer. The closest prior art of record, U.S. Patent 5,783,502 to Swanson, discloses quaternary ammonium groups that are pendant to the main chain of the polymer, as shown column 5, lines 35-45. The Declaration under 37 CFR 1.132 filed 29 April 2008 is sufficient to overcome the rejection of claims 30-31, 33-36, 38-40, 42, 44-46, 51, 67-69, 72, and 86-93 based upon 35 U.S.C. 103(a) over Swanson (5,783,502) in view of Sherba et al. (EP 0 493 970), since the Declaration shows that the polymer of Sherba is not capable of being bonded to a flexible substrate in the manner taught by Swanson and disclosed in the present claims. Therefore, the prior art of record does not teach nor reasonably suggest the claimed invention.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761